force was the Interpretation Ordinance Chapter II of the Laws of the Straits Settlements. That Ordinance included the following definition: "police officer includes any member of the police force". So far as this case is concerned the interpretation ordinance in force is the Interpretation and General Clauses Ordinance, 1948, in which it is laid down "police officer means any member of the police force of the Federation". In view of that the Public Prosecutor has argued before me that the words "police officer" in sections 25 and 26 of the Evidence Ordinance cannot be given a meaning which would include any person who is not a member of the police force of the Federation. The following passage occurs in the judgment of Willan, C.J. in the case of *Tan Shu En* :—

"Mr. Wylie also sought to distinguish the Indian authorities on the ground that in this country "Police Officer" is defined in the Interpretation Ordinance (Cap. 2 of the Straits Settlements was in force at the time of the offence) in a manner which precludes its extension to cover a Chandu Officer. We do not accept that argument and should be prepared to hold, if necessary, that, in view of decided cases establishing the meaning to be given to the words "Police Officer" in section 25 — and section 26 — of the Evidence Ordinance, that definition does not apply for the purposes of these sections".

It seems to me quite clear that the Court of three Judges in that case decided not that the wording of the Interpretation Ordinance was sufficiently wide to include a chandu officer as a police officer within the meaning of the Evidence Ordinance, but that the definition in the Interpretation Ordinance does not apply at all for the purposes of the material sections of the Evidence Ordinance.

That being so it remains for me to consider only whether there is anything in the Interpretation and General Clauses Ordinance, 1948, which would apply the definition of "police officer" for the purposes of sections 25 and 26 of the Evidence Ordinance. Apart from the difference in the definition of "police officer" in the Interpretation and General Clauses Ordinance, 1949, and Chapter II of the Laws of the Straits Settlements, there is a difference in the wording of section 2 of the two Ordinances. I have considered these differences carefully but have come to the conclusion that there is nothing in the latter Ordinance which would justify me in holding that the definition of "police officer" therein does apply for the purposes of sections 25 and 26 of the Evidence Ordinance, if the definition of "police officer" in the earlier Ordinance did not so apply.

In these circumstances it is not necessary for me to consider the difference in the wording of the actual definition of "police officer" in the two Interpretation Ordinances.

My attention has been drawn to the decision of Murray-Aynsley, C.J. in the case of *Man Woo v. Rex*[2]. The report is not sufficiently full for me to know whether the case of *Tan Shu En* was drawn to the attention of the Court, and in any case I feel bound by the decision of the Court of three Judges in that case.

This appeal is dismissed.

Appeal dismissed.

E. H. BATTAT v. THE KING.

[Privy Council (Lord Morton of Henryton, Lord Reid and Lord Tucker) May 9, 1951]

[Privy Council Appeal No. 10 of 1951]

Finance Regulations 1946 — Finance Regula ion Proclamation 1945, s. 3 — Validity of — The Straits Settlements (Repeal) Act 1946 — The Singapore Colony Order in Council, 1946, ss. 2 and 42.

Appellant was convicted of certain offences against the Finance Regulations made under the Finance Regulations Proclamation issued under the authority of the Supreme Allied Commander, South East Asia and on appeal to Court of Criminal Appeal it was held that although the Finance Regulations Proclamation was merely an order of a military commander and was not in any sense law and ceased to have any sort of authority when once the emergency which caused it to have been issued has passed, subsequent legislation, namely, the Straits Settlements (Repeal) Act 1946 and the Singapore Order in Council 1946 have made Proclamations issued by or under the authority of the Supreme Allied Commander (with certain exceptions) law at the material dates.

On appeal by special leave the Judicial Committee of the Privy Council held (assuming the Kandy Proclamation, from which the Finance Regulations Proclamation derived its force, to have been invalid in origin):—

(1) Upon the true construction of Sections 2 and 42 of the Singapore Order in Council 1946 the Kandy Proclamation and the Finance Regulations Proclamation made thereunder were not made law by the said Order in Council 1946; but (2) Clause 5 of the Indemity and Validating Ordinance 1946 gave legal efficacy to proclamations issued by or under the authority of the Supreme Allied Commander from the date of their promulgation onwards and beyond 1st April, 1946.

APPEAL from a judgment of the Court of Criminal Appeal of the Colony of Singapore (Murray-Aynsley, C.J., Evans and Gordon-Smith, JJ.) January 16, 1951.

John Foster K.C. for the appellant.

Frank Gahan for the Crown.

The judgment of the Board was delivered by:—

Lord Tucker : — The appellant appeals by special leave from an order of the Court of Criminal Appeal of Singapore dismissing his appeal from a conviction by the High Court of Singapore on 20th October, 1949, for offences against the Singapore Finance Regulations. The order granting special leave

to appeal limited the appeal to the question whether the law under which the High Court of Singapore purported to convict the appellant was at the time a law of the Colony of Singapore.

The Finance Regulations were made on 4th January, 1946, by the Controller, Finance and Accounts, and approved on the same day by the Chief Civil Affairs Officer. They are expressed to have been made in exercise of powers conferred by Section 3 of the Finance Regulation Proclamation. This Proclamation was made on 31st December, 1945, by the Deputy Chief Civil Affairs Officer, Singapore, and is expressed to have been made under the Military Administration (Delegation of Powers) Proclamation which was dated 1st October, 1945, and expressed to have been made by the General Officer Commanding Military Forces, Malaya, in exercise of powers conferred on him by the Military Administration Proclamation made at Kandy on 15th August, 1945, by Lord Louis Mountbatten, Supreme Allied Commander South-East Asia.

The Regulations and intermediate Proclamations all therefore ultimately derive from what has been referred to in these proceedings as the "Kandy Proclamation" which was expressed to have been made by reason of military necessity and for the prevention and suppression of disorder and maintenance of public safety.

The validity of the Proclamation was impugned at the trial on the ground that the Supreme Allied Commander had no power to legislate for British territory and that in any event the conditions prevailing did not justify the exercise of any such powers. This contention was rejected by the trial Judge but was upheld by the Court of Criminal Appeal who, however, dismissed the appeal on other grounds to be referred to hereafter. Before their Lordships' Board this question was not debated as Counsel on both sides were content in the first instance to deal with the issues upon which the Court of Criminal Appeal found in favour of the Crown, leaving over the question of the validity of the Kandy Proclamation for subsequent consideration if their Lordships should be of opinion that the Proclamation had not been validated and continued by subsequent legislation as the trial Judge and Court of Criminal Appeal had held.

As their Lordships are of opinion, for the reasons hereafter appearing, that, assuming the Kandy Proclamation to have been invalid in origin, it has been validated and continued in force by subsequent legislation, it becomes unnecessary to consider whether the Kandy Proclamation standing by itself had originally the force of law. Their Lordships have heard no argument on this question which clearly raises issues of great importance and they desire to emphasise that Counsel for the Crown did not accept the decision of the Court of Criminal Appeal on this issue and was prepared if necessary to support the conviction on the ground of the original validity of this Proclamation. No inference adverse to this contention is therefore to be drawn from the fact that this judgment hereafter proceeds upon an assumption of the invalidity of the Kandy Proclamation.

It is now necessary to refer to the subsequent legislation which has been relied upon as giving efficacy to the Kandy Proclamations and the subsequent Proclamations and Regulations made thereunder. The Straits Settlements (Repeal) Act, 1946, which received the Royal Assent on 26th March, 1946, and became law on that date, enacted that on such day as His Majesty might by Order in Council appoint Straits Settlements Act, 1866, should be repealed, and made provision for bringing into being by Order in Council the new Colony of Singapore, and by section 1(2) thereof further provided that such Order in Council might contain such provisions :—

"(a) determining the laws which, on and after the appointed day, are (subject to amendment or repeal by any competent legislature or authority) to remain valid as laws of any of the said territories, notwithstanding the change in the government thereof effected by the Order;

(b) adapting or modifying any such laws as aforesaid and any other laws in force at the passing of this Act relating or referring to any of the said territories . . .

as appear to His Majesty in Council necessary or expedient in view of any such change as aforesaid."

Section 2 is as follows :—

"The British Settlements Acts, 1887 and 1945 (which authorise His Majesty to make laws and establish institutions for British Settlements as defined in those Acts) shall apply in relation to each of the territories into which the said settlements and dependencies are divided by Order under this Act as if it were a British settlement as so defined."

On 27th March 1946, the Singapore Colony Order in Council, 1946 (S.R. & O. 1946, No. 464), was made. It recites the provisions of the Straits Settlements (Repeal) Act, 1946, and that by Order in Council made thereunder the appointed day was the 1st April, 1946, and proceeds :—

"Now, therefore, His Majesty, by virtue and in exercise of the powers in that behalf by the Act of 1946 and by the British Settlements Acts, 1887 and 1945, or otherwise in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—".

The Order proceeds to provide for the appointment of a Governor and Commander-in-Chief, the establishment of a Legislative Council, the constitution of a Supreme Court and Subordinate Courts and to

make provision for a transitional period pending the coming into operation of certain parts of the Order. The following sections of the Order require to be set out :—

Section 42(1) — "Subject to the provisions of this Order, the existing laws shall, except in so far as the same shall, in their application to the Colony or any part thereof be repealed, amended or otherwise affected by or under any Act of Parliament, Order of His Majesty in Council or any law made under the provisions of this Order, continue to have effect in the Colony or in that part thereof to which such law applied prior to the appointed day, but shall be construed subject to such modifications as may be necessary to bring them into conformity with the provisions of this Order".

Section 2(1) — "the existing laws" means the "common law, the doctrines of equity and all Acts of Parliament, Orders in Council, Ordinances of the Legislature of the Colony of the Straits Settlements, Proclamations issued by the Governor of the Straits Settlements, or by, or under the authority of, the Supreme Allied Commander, South-East Asia (other than the Proclamations establishing the British Military Administration and delegating powers thereunder), and all Rules, Regulations and By-laws made thereunder and all other enactments or instruments having the force of law in the territory comprising the Colony or in any part thereof immediately prior to the appointed day, whether the same were administered by the British Military Administration or not".

Section 45 — "Courts constituted for the Colony shall have within their respective powers, jurisdiction with respect to all offences (including offences against Proclamations issued by, or under the authority of the Supreme Allied Commander, South-East Asia) . . .".

Section 40(1) — "Until such time as section 13 and Parts IV and V of this Order shall come into operation, it shall be lawful for the Governor to make laws for the peace, order and good government of the Colony".

Section 49 — "The Provisions of sections 42 to 48 inclusive of this Order may be amended by laws made under Part V or under section 40".

Pursuant to section 40 above the Governor on 1st April, 1946, enacted the Indemnity and Validating Ordinance, 1946. Clause 5 thereof reads: "All laws, proclamations, orders, rules, regulations, and legislative acts whatsoever made or issued during the war period by or with the assent of any British or Allied military authority shall be deemed to have been validly made from the date of promulgation in the area concerned notwithstanding that any such law, proclamation, order, rule, regulation or legislative act may have repealed or amended or been inconsistent with any law previously in force".

It was contended on behalf of the appellant that, assuming on its proper construction Section 42 of the Order in Council of 27th March, 1946, had the effect of making the Kandy Proclamation law for the first time as from 1st April, it was *ultra vires* the Straits Settlements (Repeal) Act 1946, in that it was made five days before the appointed day under the Act and that no valid Order under section 2 which alone conferred the power to make new law, as distinct from continuing or modifying or adapting existing law, could be made until the new Colony came into existence on 1st April.

Their Lordships are of opinion that there is no substance in this contention. The Act of 1946 came into force on 26th March, 1946, and on that day section 2 conferred the power to make new law for the new Colony. Their Lordships can see no reason why the Act should be interpreted as preventing His Majesty in Council making an Order as soon as the Act came in force to take effect as from the date when the new Colony would come into existence.

The next submission by the appellant was that the Order in Council in fact created no new law but merely continued in force existing law and accordingly could not give validity to that which, on the present hypothesis, never had the force of law. This depends upon the true construction of sections 2 and 42 of the Order in the light of its other provisions. Section 42 enacts that "the existing laws shall . . . continue to have effect" Section 2 defines "the existing laws" as meaning those things which are there enumerated, concluding with the words "having the force of law in the territory . . . immediately prior to the appointed day".

It was argued on behalf of the Crown that the words "having the force of law" should be interpreted with reference to some of the enumerated things as meaning no more than *de facto* in force, though it was conceded that as regards others the words must be given their natural meaning. This was the view that found favour with the Court of Criminal Appeal. The difficulty with regard to this construction is the words "continue to have effect" in section 42. This is curious language to use in relation to that which previously had no effect if it was intended now for the first time to gvie it legal efficacy.

It was submitted alternatively that the words "having the force of law" apply only to the immediately preceding words, viz., "all other enactments or instruments". This would require some such word as "current", "operating" or "applying" to be inserted before the words "in the territory". There would be no difficulty in reading in some such word if this was necessary to give effect to the clear intention of the draftsman to be deduced from the Order as a whole, but as the scheme of the Order is consistent with the view that the draftsman was intending only to continue in force that which previously had the force of law *de jure* in the belief that the Kandy Proclamation and the Regulations made thereunder had such force, it is difficult to see the necessity for inserting words save

for the purpose of giving to the section the interpretation contended for by the Crown but not borne by the language used in its natural meaning. Giving the words their natural meaning, this appears to be an instance of the principle that an Act of Parliament, and a *fortiori* delegated legislation, does not alter the law by betraying an erroneous opinion of it. Their Lordships are of the opinion that it would be an unjustifiable strain on the language used in sections 2 and 42 to give them the interpretation for which the Crown contends.

It becomes necessary therefore to consider whether the subsequent legislation enacted pursuant to the powers conferred by the Order in Council has effected that which the Order in Council failed to achieve. In this connection the Crown relies on Clause 5 of the Indemnity and Validating Ordinance, 1946, the terms of which have been set out above. On this point the Court of Criminal Appeal expressed no opinion, but Brown, J., the trial Judge, held that if, contrary to his view, the Kandy Proclamation was originally invalid, it was validated by this Ordinance.

It was argued by Counsel for the appellant that the object of this clause was merely to afford protection to individuals who had acted under Proclamations which might be held to be invalid and which were accordingly to be deemed to have been validly made. These words were, he said, not synonymous with "shall be deemed to have had and shall continue to have the force of law". He further contended that in any event the validity given was limited to those proclamations which would have been invalid only by reason of their having repealed or amended or been inconsistent with a law previously in force.

Their Lordships are of opinion that the words "shall be deemed to have been validly made *from* the date of promulgation" clearly indicate an intention to give legal efficacy to such proclamations from the date of their promulgation onwards and beyond 1st April, 1946. The draftsman here is clearly envisaging the possibility of existing proclamations *de facto* in force being invalid in law and is intending to give them the force of law. The fact that he enumerates certain specified defects which might otherwise have rendered such instruments invalid does not, their Lordships think, limit the generality of the earlier words which are sufficient to validate all the enumerated instruments provided they have in fact been made or issued in the period in question by or with the assent of the appropriate British or Allied military authority.

The whole purpose of this Ordinance, unlike the Order in Council, is to give validity to that which might otherwise have been illegal and to afford protection to those whose acts might otherwise have made them liable to process of law. Such being its purpose it requires, if need be, to be given a liberal interpretation so as to achieve that which its language shows to have been its object. Thus construed clause 5 is to be regarded as a new law made by the Governor by virtue of the powers conferred on him by section 40 of the Order in Council or as an amendment of section 42 pursuant to the powers conferred by section 49 of the said Order.

For these reasons their Lordships are of opinion that the law under which the High Court of Singapore purported to convict the appellant was at the time a law of the Colony of Singapore, and have accordingly humbly advised His Majesty that this appeal should be dismissed.

Appeal dismissed